



**Special Meeting of the Use of Force Review Committee
DRAFT Meeting Minutes for
Wednesday, March 23, 2022, at 10:00 a.m.
(Virtual Meeting *via* Microsoft Teams Platform)**

At 10:07 a.m. Executive Session

Chairperson Brown provided an overview of the Review Committee's proposed Special Meeting Agenda and explained that the Review Committee will continue its discussion of **Internal Case No. 21-0005-P**.

At 10:32 a.m. Public Session of Special Meeting Started and Recording Began

At 10:33 a.m. Call to Order, Roll Call, and Opening Announcements/Reminders by Commission Chairperson

Chairperson Brown called the Special Meeting of the Commission's Use of Force Review Committee to order, announced that the meeting was being recorded and participation in the meeting conferred consent to being recorded.

Chairperson Brown advised that he removed Commissioner Shawn Walker from the Review Committee and thanked him for his service. Chairperson Brown asked the Commission's Secretary to conduct a Roll Call and Commissioners David Sonenshein [Review Committee Chairperson], and the Commission's Vice-Chairperson Beth Pittinger were present remotely and a quorum of the Review Committee was present. Commissioner Maines was unable to attend and excused from participation in this meeting. Jalila Parker (the Commission's Ex-Officio Member representing the Office of the Governor) was also present remotely. A copy of the Roll Call and Attendance Form is attached hereto and made a part hereof [see **Attachment 1**].

At 10:34 a.m. Public Comment Reminder

Chairperson Brown reminded members of the public of the various ways citizens may participate and offer public comment before and during all meetings of the Commission and the Commission's Review Committees to ensure public participation and transparency. For purposes of this Special Meeting, public comment was limited to three minutes per speaker.

At 10:35 a.m. Motion to Approve Use of Force Review Committee's Meeting Agenda by Unanimous Consent

Chairperson Brown asked for a motion to approve the Use of Force Review Committee's Meeting Agenda by unanimous consent. The Motion was offered and seconded by Review Committee members in attendance. Chairperson Brown asked if there were any objection(s) to the Meeting Agenda and after hearing no objections, Chairperson Brown recognized the approval of the Use of Force Review Committee's Meeting Agenda by unanimous consent. A copy of the

Use of Force Review Committee's March 23, 2022, Meeting Agenda, as adopted, is attached hereto, and made a part hereof [see Attachment 2].

At 10:35 a.m. Motion to Approve Adoption of the Draft of the Use of Force Review Committee's March 10, 2022, Meeting Minutes by Unanimous Consent

Chairman Brown asked for a Motion to approve the draft of the Use of Force Review Committee's March 10, 2022, Meeting Minutes by unanimous consent. The Motion was offered and seconded by Review Committee members. Unanimous consent to approve adoption of the draft of the Use of Force Review Committee's March 10, 2022, Meeting Minutes passed with no noted objections [a copy of the Meeting Minutes as adopted is available on the Review Committee's webpage found at www.osig.pa.gov/PSLECAC].

At 10:36 a.m. Other Review Committee Administrative Matters

Review Committee Chairperson Sonenshein did not have any administrative matters to discuss and yielded the floor back to Chairperson Brown.

At 10:36 a.m. Discussion and Deliberation for the Purpose of Reaching Preliminary Findings and Conclusions in Anticipation of the Issuance of a Preliminary Investigative Review Report for Internal Case No. 21-0005-P

Chairperson Brown opened the meeting by summarizing the Review Committee's six Review Objectives [No. 1 – prompt and fair; No. 2 – impartial; No. 3 – complete; No. 4 – whether adjudicatory findings were reasonable based on a totality of the circumstances; No. 5 – whether discipline (if any) was reasonable based on just cause standards and past disciplinary precedent; and No. 6 – whether any policy and/or training deficiencies exist, and if so, recommendations to address those shortcomings based on best practices] relevant to all reviews of completed internal investigations of lower-level use of force incidents. Chairperson Brown then recapped that the Review Committee first addressed these six Review Objectives during its Special Meeting on March 10, 2022 and some were tabled until more information was received from DOC. Chairperson Brown informed the Review Committee that a request for additional information was sent to DOC on March 8, 2022 which sought additional information including a copy of the relevant Collective Bargaining Agreement (CBA), confirmation of whether audio or video evidence of the incident was available and clarification of DOC policy or policies addressing tasers, i.e., whether tasers were considered an “impact weapon,” etc. Chairperson Brown announced that DOC provided additional information to the Review Committee on March 21, 2022 and moved to addressing each Review Objective separately.

Chairperson Brown proceeded to open discussion and deliberation of whether DOC's completed internal investigation was prompt and fair [Review Objective No. 1] which was tabled on March 10, 2022. To make this determination, the Review Committee will review how the internal investigation was conducted as compared to department policy and requirements of relevant collective bargaining agreement(s) to confirm that the investigation was conducted in a prompt and fair manner. To this end, Chairperson Brown informed the Review Committee that it received a copy of the CBA between DOC and the union representing the employee(s) involved in this incident. After a review of the applicable CBA, Chairperson Brown stated that he did not find any issues of noncompliance as compared to investigative activities concerning the matter

currently under consideration and relinquished the floor to Review Committee Chairperson Sonenshein for further deliberations. Both Review Committee Chairperson Sonenshein and Commissioner Pittinger agreed.

At this time, Chairperson Brown opened the floor to public comment and no public comment was offered. **Chairperson Brown then asked for a motion from the Review Committee rendering a determination that DOC's completed internal investigation concerning Internal Case No. 21-0005-P was deemed both prompt and fair, and the motion was offered and seconded without objection.**

Chairperson Brown then reiterated that at the Review Committee's Special Meeting held on March 10, 2022 [Review Objective No. 2], the Review Committee determined that **DOC's completed internal investigation was deemed impartial concerning Internal Case No. 21-0005-P.**

Chairperson Brown then moved the Review Committee's discussion and deliberations to reaching a determination of whether DOC's internal investigation was complete [Review Objective No. 3] which was tabled on March 10, 2022. To make this determination, Commissioners reviewed records contained in the completed internal investigative file to ensure all relevant facts that were reasonably obtainable were collected and all relevant interviews were conducted. Chairperson Brown confirmed that the Review Committee received and reviewed various documents including witness statements and general incident [completed by the Agent] and adjudication report [completed by supervisors], the latter of which included a seven-step review and approval process involving DOC's chain of command. Chairperson Brown then informed the Review Committee that in response to the Review Committee's request for additional information and/or clarification, DOC provided a response to several of its questions. For example, DOC informed the Review Committee that parole agents are not currently equipped with body cameras; however, DOC indicated that it is in the process of seeking funding and budget approval for the procurement of body cameras. Chairperson Brown stated that this is similar to the efforts of other Covered Agencies. Accordingly, Chairperson Brown confirmed that no audio or visual evidence exists of the incident currently under consideration.

Concerning taser deployments, Chairperson Brown stated that the Review Committee requested and received a copy of DOC's Taser Data Download Report (Report), which is required following every taser deployment pursuant to DOC policy. Chairperson Brown informed the Review Committee that its investigative team reviewed the Report, which consisted of a lengthy spreadsheet of data, i.e., number of cartridges deployed, duration of electric shocks, etc., capturing 191 taser trigger pulls since its purchase regarding the taser used in the use of force incident currently under review. Chairperson Brown stated DOC records confirmed that the taser device used in this incident was immediately secured and the data was pulled the following day. However, Chairperson Brown noted that there was no record of, or other data concerning, the trigger pull on or about the date of this incident. Chairperson Brown also noted that it was not clear if there was a problem with the data download or if there was a discrepancy in the report and relinquished the floor to Review Committee Chairperson Sonenshein for further deliberation.

Review Committee Chairperson Sonenshein commented that most of the process requirements were met. However, Review Committee Chairperson Sonenshein stated that he would like to confirm with DOC why data of this incident was missing from the Report before rendering a determination of completeness and issuing a final Preliminary Investigative Review Report by the committee for presentation to the Commission. Vice-Chairperson Pittinger agreed and stated that the number of times the trigger was pulled, and duration of the electric shocks was important to their determination. Vice-Chairperson Pittinger added that it appeared DOC's policy was silent on how many times a taser can be deployed and whether a subject had an opportunity to comply before multiple taser deployments, and saw no evidence that agents had to check on the subject's wellbeing after being tased. Vice-Chairperson Pittinger suggested, if that was the case, this committee can recommend that DOC include more guidance in its policy. In response, Chairperson Brown stated that in compliance with Section 8(g) within DOC's Care Custody and Control of Commonwealth Property Policy of the CCCP Policy (CCCP Policy) records indicated DOC properly removed the taser from service and ordered the data download. In addition, Chairperson Brown also stated that Sections 8(d) and 8(e) [on pages 12 and 13] within DOC's CCCP Policy authorizes employees to use tasers considering the totality of the circumstances, and that following the discharge of a taser, the employee must allow the subject time to comply before beginning a new cycle. However, Chairperson Brown pointed out that the information in the Report did not contain such data, i.e., number or duration of taser deployments, for the date and time of this incident. Vice-Chairperson Pittinger stated it was important to identify the reason(s) why the data was not contained in the Report.

Regarding an employee's duty to render aid, i.e., wellbeing check, before secondary or multiple taser deployments, Chairperson Brown stated that he did not identify such language in DOC's current CCCP Policy and asked whether the Review Committee wished to propose such a recommendation. Chairperson Brown also explained that it was unclear whether electric shocks caused by a taser deployment was considered an injury from "striking" within DOC's use of force policy.

Review Committee Chairperson Sonenshein asked whether there was closed circuit television installed in parole offices which may have captured the incident. Chairperson Brown indicated that there was not. Vice-Chairperson Pittinger asked whether DOC had a standalone or specific taser policy, and Chairperson Brown indicated that the sections embedded within DOC's CCCP Policy represented the Covered Agency's taser policy [so the information is there despite the policy's title], but that tasers were not included (as written) in DOC's use of force policy. Vice-Chairperson Pittinger replied that the Review Committee would like to recommend that additional guidance be added regarding wellbeing checks and taser barb removal and that tasers should be specifically reflected and addressed within DOC's use of force policy as a unique tool.

Chairperson Brown indicated that pursuant to DOC's CCCP Policy, tasers appeared to fall into the "pain compliance" category within DOC's use of force policy. However, tasers are not specifically mentioned on the pain compliance graphs that accompany DOC's use of force policy. Vice-Chairperson Pittinger questioned whether tasers should be graded [on the use of force continuum] higher than "pain compliance," and potentially immediately below use of "lethal" force which was a policy question for DOC. Chairperson Brown also indicated that a taser strike appeared to fall between "verbal direction" and "physical controls," such as strikes or kicks, and

between “passive resistance” and “defensive resistance,” but it is not specifically mentioned [unlike use of OC spray, escorts and pressure points that do appear in the graph]. Vice-Chairperson Pittinger stated that there were significant incidents where taser strikes were lethal, suggested that it may be akin to a “Level 3” on DOC’s continuum or possibly elevated, and opined that the Review Committee should consider speaking further with experts since it is not necessarily considered non-lethal force depending on the individual and its evolution over the last 10 years. For example, Vice-Chairperson Pittinger explained [based on a commissioned study of municipal policies related to the use of pepper spray and taser] that the data suggested a rise in, and heavier reliance on, the use of these tools to more quickly subdue a subject which resulted in what many referred to as the “lazy cop syndrome.” This “lazy cop syndrome” lends suspicion to the general legitimacy of this use of force.

Chairperson Brown then asked whether the Review Committee believed all relevant facts that were reasonably obtainable were collected regarding its determination of completeness [Review Objective No. 3]. While no audio or video evidence was available to DOC reviewers, Chairperson Brown pointed out that a Report was downloaded but the incident and/or adjudication report did not indicate that the Report was reviewed by adjudicators, or that pertinent data was missing from the taser download.

Review Committee Chairperson Sonenshein agreed but stated that the Review Committee still needs an explanation before rendering its determination. Notwithstanding missing data in the Report, Review Committee Chairperson Sonenshein recalled that the number of taser shots was provided by DOC during its Oral Presentation and included in other DOC records. Chairperson Brown said that other DOC records indicated that the Agent fired his taser once, which struck the subject in the lower torso causing him to fall forward and that the deployment lasted several seconds, and a second dry stun was deployed for several seconds to the subject’s upper back. Review Committee Chairperson Sonenshein stated that the committee needed to know if the taser download was consistent with the Agent’s statement.

Chairperson Brown then presented the Review Committee with two options: (1) send a request for additional information to the Covered Agency and reserve rendering its determination until its meeting on April 1, 2022; or (2) based on the information provided, render a preliminary determination that DOC’s internal investigation was not complete but reserve the right to change this determination after its April 1st meeting with the agency. Review Committee Chairperson Sonenshein stated that he would prefer to leave the determination open until speaking with DOC on April 1st, and Vice-Chairperson Pittinger agreed. Chairperson Brown asked whether the Preliminary Investigative Review Report should state that additional information is needed before rendering its determination, and Review Committee Chairperson Sonenshein and Vice-Chairperson Pittinger agreed.

At this time, Chairperson Brown opened the floor to public comment and no public comment was offered.

Given the Review Committee’s tabling of its determination of completeness [Review Objective No. 3] here again, Chairperson Brown then asked if the Review Committee wished to also again table reaching a determination of whether DOC’s adjudicatory findings were considered

reasonable [Review Objective No. 4 also tabled on March 10, 2022] since the two are interconnected. Review Committee Chairperson Sonenshein agreed the two determinations go “hand in hand” and stated that if the relevant information was not retrievable, the missing data could indicate an issue with the data downloading or information technology process itself. Review Committee Chairperson Sonenshein directed that Review Objective No. 4 (reasonableness of adjudicatory findings) be treated the same as Review Objective No. 3 (completeness) with a notation that more information was needed, and Vice-Chairperson Pittinger agreed.

Chairperson Brown stated that the Review Committee’s determination of whether disciplinary action (if any) was reasonable and in accordance with just cause standards [Review Objective No. 5] was not applicable to this review. At this time, Chairperson Brown opened the floor to public comment and no public comment was offered.

Chairperson Brown then moved the discussion and deliberations to determining whether any policy or training deficiencies exist [Review Objective No. 6] based on its review of DOC’s completed internal investigation. Chairperson Brown summarized that on March 10, 2022, the Review Committee identified a proposed recommendation that DOC enhance its use of force policy to include a definition of “objectively reasonable” consistent with Graham v. Conner. The second proposed recommendation offered by the Review Committee concerned the duty to render aid. Chairperson Brown reiterated that DOC’s relevant policy regarding an agent’s duty to render aid reads currently as follows:

Use of Force Policy (Duty to Render Aid): Under Medical Attention Physical Control – anytime an employee causes injury by **striking** a subject or the subject complains of injury, the employee shall: (1) Immediately call emergency medical personnel or transport the subject to the nearest emergency medical facility for medical attention; and (2) Contact the employees’ supervisor and advise the supervisor of the nature of the injury as soon as possible.

Chairperson Brown stated that taser deployments did not inherently equal “striking” under DOC’s policy as written and restated Vice-Chairperson’s desire to add provisions regarding wellbeing checks and barb removal. Chairperson Brown asked the Review Committee if DOC’s policy was deficient in this regard and whether a taser deployment should automatically require seeking medical attention and relinquished the floor to Review Committee Chairperson Sonenshein for further deliberation. Review Committee Chairperson Sonenshein stated that using the word “striking” was insufficient and suggested that the Review Committee recommend that DOC specifically add taser deployments to this policy. Chairperson Brown suggested that the Review Committee can propose that DOC include taser deployments in its definition of “striking” and Review Committee Chairperson Sonenshein replied that the Review Committee can propose this language and ask DOC for feedback. However, Vice-Chairperson Pittinger said that any use of force, including pepper spray or any other control technique used to gain compliance, should require a reciprocal check on the individual and asked if agents were considered first responders who required annual certification. Chairperson Brown replied that he was unsure [Review Committee has not asked for this information] but noted that as a subunit of a law enforcement agency, all DOC agents must receive initial first responder related training [thereafter it may be optional].

Chairperson Brown then asked whether the proposed recommendation should be modified to suggest that DOC consider updating its definition of “striking” to include taser deployments along with other uses of force like pepper spray. Review Committee Chairperson Sonenshein suggested that the policy reflect any contact between an agent and citizen that may cause injury should trigger medical intervention, i.e., use of handcuffs can cause breaking of a bone and Vice-Chairperson Pittinger agreed that it should include any “take down technique.” Chairperson Brown suggested that the proposed language can read “...anytime an employee causes an injury, or a subject complains of an injury” with deletion of the word “striking” from their policy. Review Committee Chairperson Sonenshein agreed that the proposed language was more straightforward. Vice-Chairperson Pittinger agreed that agents must be required to be both mindful and check (i.e., eliminate subjectiveness and any loopholes, which protects citizens and shields officers from any liability).

Chairperson Brown also summarized another portion of the proposed recommendation to include “when force is used, and an injury is apparent or possible, or a citizen complains of an injury, a requirement that aid is rendered and/or secured prior to releasing the citizen to the care and custody of another law enforcement or criminal justice agency along with a requirement that agents must inform the respective agency of the citizen’s apparent or possible injury, or complaint of an injury, during custody transfers.” Both Review Committee Chairperson Sonenshein and Vice-Chairperson Pittinger agreed with the proposed language.

Chairperson Brown believed that the Review Committee covered all use of force policy enhancements, will request additional information from DOC during its meeting scheduled for April 1, 2022 and reminded Commissioners that the Review Committee can make all necessary amendments during that meeting as well

Chairperson Brown then read the Review Committee’s proposed recommendation concerning procurement of body worn cameras into the record as follows: “ The Pennsylvania State Law Enforcement Citizen Advisory Commission’s Use of Force Review Committee preliminarily recommends that the Pennsylvania Board of Probation and Parole [within the Pennsylvania Department of Corrections] implement a body worn camera program as recommended by best practices offered by the United States Department of Justice along with interview and/or assessment room surveillance in support of its enforcement efforts.” Chairperson Brown noted that this recommendation was the same as that proposed to both the Pennsylvania State Police and the Department of Conservation and Natural Resources and relinquished the floor to Review Committee Chairperson Sonenshein for any further comment or discussion. Review Committee Chairperson Sonenshein remarked that he was a supporter of both closed circuit television and body worn cameras and supported the proposed recommendation and Vice-Chairperson Pittinger agreed.

At this time, Chairperson Brown opened the floor to public comment and no public comment was offered.

With no further business, Chairperson Brown asked for a motion authorizing the release of the revised Preliminary Investigative Review Report for Internal Case No. 21-0005-P to the Covered Agency in accordance with the Commission’s Bylaws. Before offering the motion,

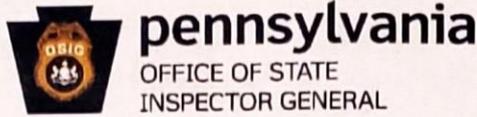
Review Committee Chairperson Sonenshein asked if the report recognized that DOC's Use of Force Continuum was "state of the art" and Chairperson Brown replied by reading such language into the record. Review Committee Chairperson Sonenshein then made the motion which was seconded with no noted objections. With such approval, Chairperson Brown announced that the Review Committee will revise the draft of its Preliminary Investigative Review Report for Internal Case No. 21-0005-P based on today's deliberations and release it to DOC for initial consideration in preparation of the Review Committee's Special Meeting scheduled for April 1, 2022 at 10:00 a.m.

At this time, Chairperson Brown opened the floor to public comment and no public comment was offered.

At 11:27 a.m. Announcements

Chairperson Brown provided closing remarks and informed the public about how to file complaints using the Commission's hotline, access the Commission's webpage, and contact the Office of Inspector General (OSIG) and the OSIG's Bureau of Law Enforcement Oversight for assistance.

At 11:28 a.m. Special Meeting of Use of Force Review Committee Adjourned

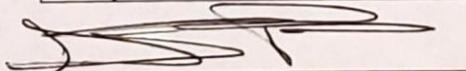


Roll Call and Attendance Form

Type of Commission Meeting: Quarterly Special Rescheduled
 Date and Time of Committee Meeting: MARCH 23, 2022 10:00AM
 Name of Committee: USE OF FORCE REVIEW COMMITTEE

Pursuant to Article 6, Sections 2 and 5 of the Pennsylvania State Law Enforcement Citizen Advisory Commission's (Commission) Bylaws, I hereby attest to having a Roll Call of Committee Membership performed at the above listed Committee meeting and recording attendance of Committee members as indicated below:

Seat Number	Name of Commission Member	Attendance		
		Present	Excused Absence	Absent
At-Large Seat 1	David A. Sonenshein	✓		
At-Large Seat 2	Dr. A. Suresh Canagarajah, Ph.D.			
At-Large Seat 3	Kelley B. Hodge, Esquire			
At-Large Seat 4	Denise Ashe			
At-Large Seat 5	Elizabeth C. Pittinger	✓		
At-Large Seat 6	Keir Bradford-Grey			
Troop A Seat	Jeffrey Wilson			
Troop B Seat	Brenda Tate			
Troop C Seat	Joshua S. Maines, Esquire		✓	
Troop D Seat	Marisa C. Williams			
Troop E Seat	Bishop Curtis L. Jones, Sr.			
Troop F Seat	Honorable Erick J. Coolidge			
Troop G Seat	Charima C. Young			
Troop H Seat	Spero T. Lappas, J.D., Ph.D			
Troop J Seat	VACANT			
Troop K Seat	Andrea A. Lawful-Sanders			
Troop L Seat	VACANT			
Troop M Seat	Marvin Boyer			
Troop N Seat	Marilyn M. Brown, Ed.D.			
Troop P Seat	Rev. Shawn M. Walker			
Troop R Seat	Krista Somers			


 Signature of Sha S. Brown,
 Commission Chairperson



USE OF FORCE REVIEW COMMITTEE SPECIAL MEETING AGENDA

The Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission), established by Executive Order 2020-04 (as amended by Governor Tom Wolf on April 30, 2021) announces a Special Meeting of the Commission's Use of Force Review Committee (Review Committee) to be held in person at the **Office of State Inspector General located at 555 Walnut Street, 7th Floor, Forum Place, Harrisburg, PA 17101** and virtually *via* the Commission's information technology platform (Microsoft Teams) on **Wednesday, March 23, 2022, at 10:00am (Executive Session) and at 10:30am (Public Session).**

In accordance with 65 Pa.C.S. § 709(b) and Article 6, Section 2 of the Commission's Bylaws, the Review Committee's Meeting Agenda consists of the following items:

- (1) Executive Session [*closed to the public* – Review of Meeting Agenda; Recap of previous confidential and pre-deliberative discussions related to and proposed schedule for completion of the review of **Internal Case No. 21-0005-P** for purposes of issuing Preliminary Investigative Review Report; and other administrative matters];
- (2) Call to Order and Roll Call [*expected to begin at approximately 10:30am*];
- (3) Acceptance of Meeting Agenda;
- (4) Approval and adoption of previous Special Meeting Minutes from March 10, 2022;
- (5) Approval of administrative and/or other procedural matters;
- (6) Report by the Use of Force Review Committee's Chairperson;
- (7) Opportunity for public comment; and
- (8) Discussion, deliberation and official action(s) for purposes of reaching preliminary Findings and Conclusions in anticipation of issuing **Preliminary Investigative Review Report for Internal Case No. 21-0005-P** which will include: (i) whether the completed internal investigations of the Covered Agency was prompt, fair, impartial, complete, and reasonable; (ii) whether the substance of all related use of force and any other relevant internal policies, procedures, controls, regulations, guidance, practices and/or training of the Covered Agency applicable to **Internal Case No. 21-0005-P** are adequate and effective; and (iii) if not considered adequate and/or effective, what recommendation(s), if any, may be necessary to minimize and/or reduce likelihood of future incidents.

Individuals having questions regarding this Special Meeting of the Commission's Use of Force Review Committee, which is open to the public, should contact the Bureau of Law Enforcement Oversight within the Pennsylvania Office State Inspector General (OSIG) at (717) 787-6835. Media inquiries may be directed to the OSIG's Deputy State Inspector General for External Affairs Jonathan Hendrickson at (717) 265-8396.

Sha S. Brown, Chairperson
*Pennsylvania State Law Enforcement Citizen Advisory
Commission*

Pennsylvania State Law Enforcement Citizen Advisory Commission

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